

## Office of the Secretary, Interior

## § 30.236

(2) The order and inventory to other affected agencies.

### § 30.234 What happens if a hearing transcript has not been prepared?

When a hearing transcript has not been prepared:

(a) The recording of the hearing must be retained in the office of the judge issuing the decision until the time allowed for rehearing or appeal has expired; and

(b) The original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

#### DECISIONS IN FORMAL PROCEEDINGS

### § 30.235 What will the judge's decision in a formal probate proceeding contain?

The judge must decide the issues of fact and law involved in any proceeding and issue a written decision that meets the requirements of this section.

(a) In all cases, the judge's decision must:

(1) Include the name, birth date, and relationship to the decedent of each heir or devisee;

(2) State whether the heir or devisee is Indian or non-Indian;

(3) State whether the heir or devisee is eligible to hold property in trust status;

(4) Provide information necessary to identify the persons or entities and property interests involved in any settlement or consolidation agreement, renunciations of interest, and purchases at probate;

(5) Approve or disapprove any renunciation, settlement agreement, consolidation agreement, or purchase at probate;

(6) Allow or disallow claims against the estate under this part, and order the amount of payment for all approved claims;

(7) Include the probate case number that has been assigned to the case in any case management or tracking system then in use within the Department;

(8) Make any other findings of fact and conclusions of law necessary to decide the issues in the case; and

(9) Include the signature of the judge and date of the decision.

(b) In a case involving a will, the decision must include the information in paragraph (a) of this section and must also:

(1) Approve or disapprove the will;

(2) Interpret provisions of an approved will as necessary; and

(3) Describe the share each devisee is to receive under an approved will, subject to any encumbrances.

(c) In all intestate cases, including a case in which a will is not approved, and any case in which an approved will does not dispose of all of the decedent's trust or restricted property, the decision will include the information in paragraph (a) of this section and must also:

(1) Cite the law of descent and distribution under which the decision is made; and

(2) Describe the distribution of shares to which the heirs are entitled; and

(3) Include a determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

### § 30.236 How are covered permanent improvements treated?

(a) In an intestate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If . . .	then the covered permanent improvement passes to . . .
(1) A Tribal probate code approved under 25 CFR part 18 specifies how the covered permanent improvement will be handled.	the person(s) designated in the Tribal probate code to receive it.
(2) A consolidation agreement approved under subpart F of this part specifies how the covered permanent improvement will be handled.	the person(s) designated in the consolidation agreement to receive it.
(3) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, but there is a renunciation of the trust or restricted interest in the parcel under subpart H of this part.	the recipient of the trust or restricted interest in the parcel under the renunciation.

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If . . .	then the covered permanent improvement passes to . . .
(4) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, and there is no renunciation of the trust or restricted interest in the parcel under subpart H of this part.	each eligible heir to whom the trust or restricted interest in the parcel descends.

(b) In a testate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If . . .	then the covered permanent improvement passes to . . .
(1) The will expressly states how the covered permanent improvement will be handled.	the person(s) designated in the will to receive it.
(2) The will does not expressly state how the covered permanent improvement will be handled.	the person(s) designated in the will to receive the trust or restricted interest in the parcel.

(c) The provisions of the Act apply to a covered permanent improvement:

(1) Even though it is not held in trust; and

(2) Without altering or otherwise affecting its non-trust status.

(d) The judge's decision will specifically direct the distribution only of the decedent's trust or restricted property, and not any non-trust permanent improvement attached to a parcel of trust or restricted land. However, the judge:

(1) Will include in the decision a general statement of the substantive law of descent or devise of permanent improvements; and

(2) Can approve a consolidation agreement under subpart F of this part that includes a covered permanent improvement.

[76 FR 7507, Feb. 10, 2011]

## § 30.237 What notice of the decision will the judge provide?

When the judge issues a decision, the judge must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The notice must include a statement that interested parties who are adversely affected have a right to file a petition for

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rehearing with the judge within 30 days after the date on which notice of the decision was mailed. The decision will become final at the end of this 30-day period, unless a timely petition for rehearing is filed with the judge.

[73 FR 67289, Nov. 13, 2008. Redesignated at 76 FR 7507, Feb. 10, 2011]

## § 30.238 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?

(a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.237.

(b) If the petition is based on newly discovered evidence, it must:

(1) Be accompanied by one or more affidavits of witnesses stating fully the content of the new evidence; and

(2) State the reasons for the failure to discover and present that evidence at the hearings held before the issuance of the decision.

(c) A petition for rehearing must state specifically and concisely the grounds on which it is based.

(d) The judge must forward a copy of the petition for rehearing to the affected agencies.

[73 FR 67289, Nov. 13, 2008. Redesignated at 76 FR 7507, Feb. 10, 2011, as amended at 76 FR 7508, Feb. 10, 2011]

## § 30.239 Does any distribution of the estate occur while a petition for rehearing is pending?

The agencies must not initiate payment of claims or distribute any portion of the estate while the petition is pending, unless otherwise directed by the judge.

[73 FR 67289, Nov. 13, 2008. Redesignated at 76 FR 7507, Feb. 10, 2011]

## § 30.240 How will the judge decide a petition for rehearing?

(a) If proper grounds are not shown, or if the petition is not timely filed, the judge will:

(1) Issue an order denying the petition for rehearing and including the reasons for denial; and

(2) Furnish copies of the order to the petitioner, the agencies, and the interested parties.